

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Shirley Lindsay,

Plaintiff,

v.

Torn & Glasser, Inc., a
California Corporation; and Does
1-10,

Defendants.

Case No. 2:17-cv-02179-ODW-E

Plaintiff's Case Statement

Pursuant to this Court's Order Granting Application for Stay filed May 4, 2017, the plaintiff submits her Plaintiff's Case Statement.

A. Itemized List

The specific conditions at the site that forms the basis of this lawsuit are the lack of van-accessible parking space and accessible transaction counter at the Store.

- Parking Space:
 - ❖ Any business that provides parking spaces must provide a sufficient number of handicap parking spaces. 1991 Standards § 4.1.2(5).

2010 Standards § 208. According to the 1991 Standards, if a parking lot has 30 spaces, it must have 2 accessible parking spaces. 1991 Standards § 4.1.2(5)(a). Under the 2010 Standards, a parking lot with 30 spaces must have 2 accessible spaces. 2010 Standards § 208.2 and 1 of them must be van accessible. Id. at 208.2.4.

- ❖ Here, there was no van-accessible parking spaces marked and reserved for persons with disabilities during plaintiff's visit.
- ❖ In addition to not having a van-accessible parking space, the defendants routinely and regularly store merchandise, machinery and pallets in the parking space marked and reserved for persons with disabilities.
- ❖ See attached photo depicting the above



- Transaction Counter:

- ❖ In areas used for transactions where counters have cash registers and are provided for sales or distribution of goods or services to the public, at least one of each type shall have a portion of the counter which is at least 36 inches in length with a maximum height of 36 inches above the floor. 1991 Standards § 7.2(1). Under the 2010 Standards, where the approach to the sales or service counter is a parallel approach, such as in this case, there must be a portion of the sales counter that is no higher than 36 inches above the floor and 36 inches in width and must extend the same depth as the rest of the sales or service counter top. 2010 Standards § 904.4 & 904.4.1.
- ❖ Here, the transaction counter is 44 inches in height. There is no lowered, 36 inch portion of counter for use by persons in wheelchairs. Moreover, the defendants crowd the transaction counter with merchandise and displays that narrow the clear width of the counter to less than 36 inches.
- ❖ See attached photo depicting the above



1 *Note:* as stated in the Complaint, given the obvious and blatant
2 violations, the plaintiff has alleged, on information and belief, that there are
3 other violations and barriers on the site that relate to her disability. Plaintiff
4 intends to conduct a site inspection and amend the complaint, to provide
5 proper notice regarding the scope of this lawsuit, once she conducts a site
6 inspection. See *Doran v. 7-Eleven Inc.*, (9th Cir. 2008) 524 F.3d 1034 (holding
7 that once a plaintiff encounters one barrier at a site, he can sue to have all
8 barriers that relate to his disability removed regardless of whether he
9 personally encountered them). Thus, settlement must address this fact as
10 outlined below.

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12 **B. Amount of Damages**

13 Under the Unruh Civil Rights Act and the California Disabled
14 Persons Act, a plaintiff is entitled to two types of damages: (1) actual damages
15 and (2) a penalty assessment. Cal. Civ. Code § 52(a); 54.3(a). “The statute
16 lists actual damages and statutory damages as two separate categories of
17 damages that a plaintiff may recover.” *Botosan v. Paul McNally Realty*, 216
18 F.3d 827, 835 (9th Cir. 2000). The penalty assessment can be “no less than
19 \$4,000” under the Unruh Civil Rights Act per violation (Cal. Civ. § 52(a)) and
20 no less than \$1,000 under the California Disabled Persons Act per violation
21 (Cal. Civ. § 54.3(a)). Thus, the plaintiff’s damages are measured at \$4,000
22 + actual damages for each offense.

23
24 In this matter, Plaintiff is entitled to \$4,000 for the date of incident in
25 the Complaint and claims \$4,000 as he has been deterred from returning to
26 the premises. Thus Plaintiff claims \$8,000 in statutory damages in total.

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1 **C. Demand for Settlement of Case**

2 First, to provide for van-accessible parking space and accessible
3 transaction counter at the Store.

4 Second, enter into a court enforceable consent decree binding the
5 defendants to: (1) institute policies and procedures whereby they maintain the
6 property in a compliant state; (2) the defendants agree to obtain and deliver a
7 CASp report on the property to the plaintiff (with photos) within 30 days that
8 identifies all access barriers. Thereafter, the plaintiff will have 30 days to
9 comment on the report. If the plaintiff notes other barriers, the plaintiff can
10 make a demand that the defendants correct them. If the parties cannot
11 reasonably agree on barrier correction within 10 days following plaintiff's
12 demand, the plaintiff has the right to file a new action or refile the action in
13 state or federal court.

14 Lastly, to settle this matter at mediation, that Defendants pay \$8,000 in
15 total monetary consideration and submit to the court as to reasonable
16 attorney's fees and costs as provided by both the ADA and Unruh.

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18 Dated: May 18, 2017

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21 By: /s/ Dennis Price
22 Dennis Price, Esq.
23 Attorneys for Plaintiff
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